

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

RODERICK CLARK MILLER

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:07cv541LG-JMR

**HARRISON COUNTY, MISSISSIPPI, by and through
its Board of Supervisors, HARRISON COUNTY
SHERIFF DEPARTMENT, SHERIFF GEORGE
PAYNE, officially and in his individual capacity,
DIRECTOR OF CORRECTIONS MAJOR DIANNE
GATSON-RILEY, officially and in her individual
capacity, BOOKING SUPERVISOR CAPTAIN RICK
GASTON, officially and in his individual capacity,
TRAINING DIRECTOR CAPTAIN PHIL TAYLOR,
officially and in his individual capacity, CENTRAL
CONTROL OFFICER PRESTON WILLS, officially
and in his individual capacity, BOOKING ROOM DEPUTY
JERRED MARK NECAISE, officially and in his individual
capacity, BOOKING ROOM DEPUTY CATHERINE
PAVOLINI, officially and in her individual capacity,
AMERICAN CORRECTIONAL ASSOCIATION, and
OTHER UNKNOWN JOHN and JANE DOES A-Z, also in
their official and individual capacities**

DEFENDANTS

MOTION TO COMPEL

COME NOW Defendants, Sheriff George Payne, Jr., in his official and in individual capacities, Harrison County Sheriff's Department, Dianne Gatson-Riley, in her official and individual capacities, Phil Taylor, in his official and individual capacities, Catherine Pavolini, in her official and individual capacities, and Preston Wills, in his official capacity only, by and through their attorneys, Dukes, Dukes, Keating & Faneca, P.A., and pursuant to the Federal Rules of Civil Procedure, file this Motion to Compel Plaintiff's Pre-Discovery Disclosures and Answers to Discovery, and would show unto the Court the following, to-wit:

I.

On October 25, 2007, a Telephonic Case Management Conference was held before the Court, and attended by counsel for the parties. Pursuant to the Federal Rules of Civil Procedure, the parties' Pre-Discovery Disclosures were due no later than November 8th, 2007. See FRCP 26(a)(1). Defendants' counsel has contacted Plaintiff's counsel by correspondence dated November 20, 2007 requesting Plaintiff's Pre-Discovery Disclosures as evidenced by the attached **Exhibit "A"**. To date, the Plaintiff has failed to submit his Disclosures.

II.

In addition, Defendant George Payne's First Set of Interrogatories and Requests for Production of Documents, and Defendant Phil Taylor's First Set of Interrogatories were propounded to the Plaintiff on or about November 15, 2007. Notices of said discovery requests are attached collectively hereto as **Exhibit "B"**. Responses to said discovery were due on or about December 17, 2007. To date, Plaintiff has not served any responses to said discovery requests.

III.

The undersigned certifies that a good faith effort has been made to resolve this discovery dispute pursuant to uniform District Court Rule 37.1. See Good Faith Certificate and correspondence attached hereto as **Exhibit "C"**. As stated in the affidavit, attached hereto as Exhibit "D," on January 7, 2008, counsel for the Defendants mailed a Good Faith Certificate to Plaintiff, but never received a response.

IV.

To date, the Plaintiff has wholly and fully failed to provide these Defendants with his Pre-Discovery Disclosures and to respond to the Interrogatories and Requests for Production of Documents propounded to him, and an Order should be entered against Plaintiff compelling him to furnish responses thereto. Counsel for the Defendants hereby certifies that they have attempted a good faith resolution of this matter pursuant to Uniform Local Rule 37.1 for the Southern District of Mississippi.

V.

In addition, due to Plaintiff's failure to timely and adequately respond to Defendants' discovery requests, Defendants are prejudiced by the fact that they are not in a position to fully evaluate Plaintiff's case and determine whether other individuals should be deposed. Therefore, Defendants reserve the right to file a motion for additional time to complete discovery and for additional time to file dispositive motions in the event one should be needed.

WHEREFORE, PREMISES CONSIDERED, the moving Defendants file their Motion to Compel and respectfully request that this Court enter an Order compelling the Plaintiff to submit his Pre-Discovery Disclosures and respond to discovery as propounded to him by the Defendants.

RESPECTFULLY SUBMITTED, this the 17th day of January, 2008.

SHERIFF GEORGE PAYNE, JR., HARRISON
COUNTY SHERIFF'S DEPARTMENT, DIANNE
GATSON-RILEY, PHIL TAYLOR, CATHERINE
PAVOLINI, ALL IN THEIR INDIVIDUAL AND
OFFICIAL CAPACITIES, AND PRESTON
WILLS, IN HIS OFFICIAL CAPACITY ONLY,
DEFENDANTS

BY: DUKES, DUKES, KEATING & FANEC, P.A.

BY: s/Cy Faneca
CY FANEC, MSB #5128

Cy Faneca, MSB #5128
Trace McRaney, MSB #9905
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CERTIFICATE OF SERVICE

I, CY FANCA, do hereby certify that I have this day delivered, via electronic filing and/or United States Mail, postage fully pre-paid, a true and correct copy of the above and foregoing pleading to the following:

Michael W. Crosby, Esq.
2111 25th Avenue
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John Whitfield, Esq.
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George D. Hembree, III
P.O. Drawer 22949
Jackson, Mississippi 39225-2949

This, the 17th day of January, 2008.

s/Cy Faneca
CY FANCA